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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/092,919

03/08/2002

Kjell Olmarker

003300-914

1488

7590

04/26/2006

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EXAMINER

MONDESI, ROBERT B

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/092,919		OLMARKER, KJELL	
	Examiner		Art Unit	
	Robert B. Mondesi		1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 13, 2006 has been entered.

Status of the claims

Claims 11-22 are canceled. **Claims 1-10 and 23-25** are presently pending and under examination.

Withdrawal of Objections and Rejections

The objections and rejections not explicitly restated below are withdrawn.

Maintenance of rejections

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1-10 and 23-25 remain rejected under 35 U.S.C. 102(e) as being anticipated by Reuben et al., United States Patent Application Publication US 2002/0072596.

This rejection was explained in the Office action mailed November 3, 2004.

Response to applicant's arguments

In regards to the rejection of **Claims 1-10 and 23-25** remain rejected under 35 U.S.C. 102(e) as being anticipated by Reuben et al., applicants assert that Reuben et al., merely disclose a splice variant of human lactoferrin. This splice variant comprises the sequence EDCIALKGEADA (SEQ ID NO:6) as compared to known human lactoferrin which comprises the corresponding sequence EDCIALVLKGEADA.

Applicants assert further that Reuben et al., teach several "preferred" conditions, diseases and disorders which can be treated with the claimed lactoferrin, polypeptides, agonists or antagonists listed by Reuben. The treatment of hypertrophic scars or keloids is given as example of a condition involving neoangiogenesis, which can be treated with lactoferrin, polypeptides, agonists or antagonists, paragraph (0590) - (0591). Thus, the treatment of scars is only one of a laundry list of diseases, which are purportedly treatable with the polypeptides, agonists or antagonists in question.

Applicants' arguments have not been found persuasive. It is clearly stated in dependent **claim 23**, " wherein said substance is lactoferrin or **a peptide derived from lactoferrin**", so applicants' argument that the reference teaches "merely a splice variant of lactoferrin" is a moot point since the scope of the claims encompasses peptide derivatives and variants. Furthermore the sequence information that the applicants have cited appears nowhere in the claims or the specification of the present application; therefore the breadth and scope of the claims is not limited to lactoferrin comprising or consisting of a particular amino acid sequence. There is no particular segment of the

specification of the present application wherein the applicants have defined lactoferrin beyond the broad definition that is available in the prior art.

It is interesting to note that the applicants themselves have acquiesced on the record that the reference teaches the use of lactoferrin in a method of reduction of adhesion formation, albeit along with other methods of treatment. The important point that needs to be conveyed here is that the active step of the method of the invention is the administering of a substance such as lactoferrin or a derivative of lactoferrin that inhibits a pro-inflammatory cytokine. This is clearly taught by the reference. Applicants have raised an important point by indicating that presently the method of the invention involves a specific population, namely those in need of treatment for reduction of adhesion formation but this is also taught by the reference, as the applicants have admitted accurately on the record.

The fact that lactoferrin or a derivative of lactoferrin can be used for the treatment of other diseases or ailments than the reduction of adhesion formation does not detract from the fact that presently Reuben et al. teach the active step of the claimed method of the invention, which is the administering of lactoferrin and teach the specific population that is the recipient of the said administering; therefore Reuben et al. do indeed teach all the limitations of the claimed invention.

Conclusion

No claims are allowed

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the

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grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

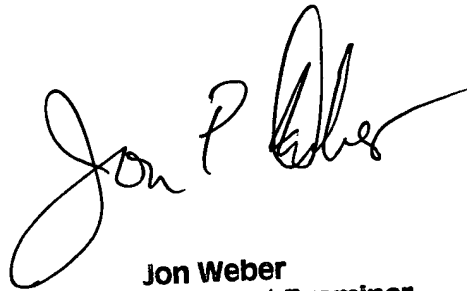
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert B. Mondesi
Patent Examiner
Group 1653

Robert B. Mondesi
4-19-06


Jon Weber
Supervisory Patent Examiner